



## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R02-OAR-2012-0032, FRL-9645-8]

### Approval and Promulgation of Implementation Plans and Operating Permits Program; Commonwealth of Puerto Rico; Administrative Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution, submitted to EPA by the Puerto Rico Environmental Quality Board on July 13, 2011. This action approves revisions to Rules 102, 111, 115, 116, 609 and Appendix A. Generally the revisions to the regulations involve administrative changes which improve the clarity of the rules contained in the Commonwealth's Implementation Plan and Operating Permits Program. They do not change the emission limitations nor add significant new requirements.

DATES: This direct final rule is effective on [Insert date 60 days from date of publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days from date of publication in the Federal Register]. If EPA receives such comment, EPA will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R02-OAR-2012-0032**, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov)
- Fax: 212-637-3901
- Mail: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- Hand Delivery: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R02-OAR-2012-0032. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not

know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Environmental Protection Agency, Region 2 Caribbean Field Office Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, Santurce, Puerto Rico 00909.

Environmental Protection Agency, Air and Radiation Docket and Information Center,  
Environmental Protection Agency, Room B-108, 1301 Constitution Avenue, (Mail Code 6102T)  
N.W., Washington D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:**

Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th  
Floor, New York, New York 10007-1866, (212) 637-3381.

**SUPPLEMENTARY INFORMATION:**

On July 13, 2011, the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a request for approval of revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution (PRRCAP). In the context of the Clean Air Act (CAA or Act), the Commonwealth of Puerto Rico is regarded as a state. Generally the changes to the PRRCAP involve administrative changes which improve the clarity of the rules. They do not change the emission limitations nor add significant new requirements.

**I. Revisions to the PRRCAP**

Most of the revisions consist of clarification type changes such as public law or code cites or word changes. A summary of the various revisions is given below. EPA has determined that the revisions improve the effectiveness of the PRRCAP and will have no negative effect on maintaining the national ambient air quality standards.

## A. General Provisions

### *Rule 102, “Definitions” and Appendix A, “Hazardous Air Pollutants – Section 112(b) of the Clean Air Act”*

PREQB revised two definitions in the revised Rule 102. They include the definition for “Volatile Organic Compounds (VOC)” and the definition for “Applicable Rule and Regulation.”

PREQB revised the VOC definition to make it consistent with EPA’s definition for VOC found in 40 CFR section 51.100. The revision to the “Applicable Rule and Regulation” definition includes a change to the citation of Puerto Rico’s Environmental Public Policy Act. It was previously referenced in the definition as Law No. 9 of June 18, 1970. That Law was replaced by Law No. 416 of September 22, 2004.

PREQB also revised Appendix A to the PRRCAP. PREQB revised Appendix A to make it consistent with EPA’s amended list of hazardous air pollutants in CAA section 112. Appendix A is referenced in the federally approved definition of Rule 102 – “Hazardous Air Pollutant” of the PRRCAP.

### *Rule 111, “Applications, Hearings, Public Notice” and Rule 115, “Punishment”*

PREQB revised Rules 111 and 115 in order to change the citation to Puerto Rico’s Environmental Public Policy Act. It was previously referenced in Rules 111 and 115 as Law No. 9 of June 18, 1970. That Law was replaced by Law No. 416 of September 22, 2004.

*Rule 116, “Public Nuisance”*

PREQB revised Rule 116 in order to revise the citation of the applicable Puerto Rico code. Rule 116 previously referenced Article 329 of the Penal Code of Puerto Rico and this reference was replaced with Article 277 of the Civil Prosecution Code of Puerto Rico.

None of the revisions to Rules 102, 111, 115, 116 or Appendix A of the PRRCAP involve changing the stringency of these provisions. EPA has thoroughly reviewed all of the revisions contained in these rules and has determined they meet EPA guidance and requirements; therefore, EPA is approving these revised rules. However, with regard to the revisions to the definition of VOC in Rule 102 and Appendix A, which are intended to achieve consistency with the CAA Section 112 list of chemicals, it is important to note that the CAA Section 112 list could potentially be revised by EPA and, for federal enforcement purposes, EPA will rely on the federally issued CAA Section 112 list.

**B. Other Provisions**

*Rule 609, “Permit Review”*

PREQB also submitted a revision to Rule 609(g), “Confidential information” of the PRRCAP on July 13, 2011. The revisions to Rule 609 include the citation for Puerto Rico’s Environmental Public Policy Act. It was previously referenced as Law No. 9 of June 18, 1970. That Law has subsequently been replaced by Law No. 416 of September 22, 2004. Rule 609 was never approved into the federally enforceable SIP for Puerto Rico since the provisions of Rule 609 are

relevant to the Title V of the Act requirements. The federally approved SIP reflects only Title I of the Act requirements and not Title V. Therefore, EPA is not approving the revisions to Rule 609 into the federally enforceable Puerto Rico SIP. However, EPA is approving the revision to Rule 609 as part of the federally approved Puerto Rico Title V operating permits program. Rule 609 and the Puerto Rico Title V program were previously approved by EPA on February 26, 1996 (61 FR 7073).

## **II. Conclusion**

The revisions to Rules 102, 111, 115, 116 and Appendix A of the PRRCAP, effective February 18, 2011, are generally administrative changes, which improve the clarity of the rules. They do not change emission limitations nor add significant new requirements. EPA has thoroughly reviewed all of the revisions contained in these rules and has determined they meet EPA guidance and requirements. EPA is therefore approving revised PRRCAP Rules 102, 111, 115, 116 and Appendix A into the SIP. In addition, EPA is approving revised Rule 609 of the PRRCAP, effective February 18, 2011, as part of the federally approved Puerto Rico Title V operating permits program.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This

rule will be effective [Insert date 60 days from the date of publication in the Federal Register] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication in the Federal Register].

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### **III. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);



- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal

governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 30, 2012.

Judith A. Enck,  
Regional Administrator  
Region 2

Parts 52 and 70 , chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 - [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

**Subpart BBB - Puerto Rico**

2. Section 52.2720 is amended by revising paragraphs (c)(27)(ii), (c)(36)(i)(A)(1) and (c)(37)(i)(A) and adding paragraph (c)(38) to read as follows:

**§ 52.2720     Identification of plan.**

\*           \*           \*           \*           \*

(c) \* \* \*

\*           \*           \*           \*           \*

(27) \* \* \*

(ii) July 24, 1980, providing a comprehensive set of adopted regulations, entitled “Regulation for the Control of Atmospheric Pollution.” Rules 115 and 116 revised in 2011; see paragraph 38 of this section.

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(36) \* \* \*

(i) \* \* \*

(A) \* \* \*

(1) Amendments to Part I, “General Provisions”, Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, and 121, effective September 28, 1995. Rule 111 revised in 2011; see paragraph 38 of this section.

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(37)\* \* \*

(i) \* \* \*

(A) Rule 102 Definitions, Guaynabo PM<sub>10</sub> Maintenance Area; filed with the Secretary of State April 28, 2009; effective May 28, 2009. Rule 102 revised in 2011; see paragraph 38 of this section.

\* \* \* \* \*

(38) Revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution submitted on July 13, 2011 by the Puerto Rico Environmental Quality Board.

(i) Rule 102, Definitions, filed with the Secretary of State January 19, 2011; effective February 18, 2011. Supersedes version in paragraph 37.

(ii) Rule 111, Applications, Public Hearings and Public Notice; filed with the Secretary of State January 19, 2011; effective February 18, 2011. Supersedes version in paragraph 36.

(iii) Rule 115, Penalties; filed with the Secretary of State January 19, 2011; effective February 18, 2011. Supersedes version in paragraph 27.

(iv) Rule 116, Public Nuisance; filed with the Secretary of State January 19, 2011; effective February 18, 2011. Supersedes version in paragraph 27.

(v) Appendix A, Hazardous Air Pollutants – Section 112(b) of the Clean Air Act; filed with the Secretary of State January 19, 2011; effective February 18, 2011.

3. Section 52.2723 is amended by revising the entries for Rules 102, 103, 111, 113, 115 through 117 and adding a category for appendices and an entry for Appendix A to read as follows:

**§ 52.2723 EPA - approved Puerto Rico regulations.**

**Regulation for the Control of Atmospheric Pollution**

| Puerto Rico regulation   | Commonwealth effective date | EPA approval date  | Comments   |
|--|-----------------------------|--|--|
| * * * * *  |                             |  |  |
| Rule 102 - Definitions   | 2/18/11                     | [Insert date of publication in the Federal Register], [Insert page number where the document begins] | Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004. |
| Rule 103 - Source Monitoring, Recordkeeping, Reporting, Sampling and Testing Methods | 9/28/95                     | 1/22/97, 62 FR 3213  |  |
| * * * * *  |                             |  |  |
| Rule 111 - Applications, Public Hearings and Public Notice                           | 2/18/11                     | [Insert date of publication in the Federal Register], [Insert page number where the document begins] | Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004. |
| Rule 113 - Closure of a Source   | 9/28/95                     | 1/22/97, 62 FR 3213  |  |
| * * * * *  |                             |  |  |

|  |         |  |  |
|--|---------|--|--|
| Rule 115 - Penalties   | 2/18/11 | [Insert date of publication in the Federal Register], [Insert page number where the document begins] | Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004. |
| Rule 116 - Public Nuisance   | 2/18/11 | [Insert date of publication in the Federal Register], [Insert page number where the document begins] | Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004. |
| Rule 117 - Overlapping or Contradictory Provisions                         | 9/28/95 | 1/22/97, 62 FR 3213  |  |
| * * * * *  |         |  |  |
| <b>APPENDICES</b>  |         |  |  |
| Appendix A, Hazardous Air Pollutants – Section 112(b) of the Clean Air Act | 2/18/11 | [Insert date of publication in the Federal Register], [Insert page number where the document begins] |  |

**PART 70--[AMENDED]**

4. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

5. Appendix A to part 70 is amended by adding paragraph (c) to the entry for Puerto Rico to read as follows:

**Appendix A to Part 70--Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

*Puerto Rico*

\* \* \* \* \*

(c) The Puerto Rico Environmental Quality Board submitted a revision to its operating permits program on July 13, 2011. The revision includes a change to the Puerto Regulations for the Control of Atmospheric Pollution, Rule 609(g), "Confidential Information," effective on February 18, 2011. The reference to Puerto Rico's Environmental Public Policy Act, Law No. 9 of June 18, 1970, is replaced with Law 416 of September 22, 2004.

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[FR Doc. 2012-6922 Filed 03/21/2012 at 8:45 am; Publication Date:  
03/22/2012]